

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CELLULAR COMMUNICATIONS EQUIPMENT LLC, v. AT&T INC., ET AL.,	Plaintiff, Defendants.	C.A. No. 2:15-cv-00576 JURY TRIAL DEMANDED
CELLULAR COMMUNICATIONS EQUIPMENT LLC, v. SPRINT SOLUTIONS, INC., ET AL.,	Plaintiff, Defendants.	C.A. No. 2:15-cv-00579 JURY TRIAL DEMANDED
CELLULAR COMMUNICATIONS EQUIPMENT LLC, v. T-MOBILE USA, INC., ET AL.,	Plaintiff, Defendants.	C.A. No. 2:15-cv-00580 JURY TRIAL DEMANDED
CELLULAR COMMUNICATIONS EQUIPMENT LLC, v. CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, ET AL.,	Plaintiff, Defendants.	C.A. No. 2:15-cv-00581 JURY TRIAL DEMANDED

**JOINT MOTION TO SEVER AND STAY
CLAIMS AGAINST THE CARRIER DEFENDANTS**

Plaintiff Cellular Communications Equipment LLC (“CCE”) and Defendants AT&T Mobility LLC, Cellco Partnership d/b/a Verizon Wireless, Sprint Solutions, Inc., Sprint Spectrum

L.P., Boost Mobile, LLC, T-Mobile USA, Inc., and T-Mobile US, Inc. (collectively, the “Carrier Defendants”) move jointly to sever and stay CCE’s claims against the Carrier Defendants in Civil Action Nos. 2:15-cv-00576, 2:15-cv-00579, 2:15-cv-00580 and 2:15-cv-00581 so that CCE can proceed on its claims against the lone remaining Manufacturer Defendant, Apple Inc.

The Carrier Defendants previously filed an opposed Motion to Sever and Stay on December 9, 2016, asserting that (1) CCE’s claims against the Carrier Defendants were peripheral to CCE’s claims against the Manufacturer Defendants and (2) adjudication of the claims against the Manufacturer Defendants would dispose of the claims against the Carrier Defendants. Dkt. No. 333. At the time that motion was filed, the case had five Manufacturer Defendants: Base Station Defendants Ericsson and ALU and Handset Defendants Apple, HTC, and ZTE. Since that time, CCE has resolved its claims against both Base Station Defendants, and they have been dismissed with prejudice (including a dismissal with prejudice of CCE’s claims against the Carrier Defendants with respect to base station equipment). Dkt. Nos. 354, 370. Further, CCE’s claims against two of the three Handset Defendants, HTC and ZTE, have been dismissed from this consolidated case. Dkt. No. 379. Accordingly, the sole remaining Manufacturer Defendant in this case is Apple.

The posture of this case is now similar to that which existed in CCE Wave 1 when Judge Mitchell severed and stayed claims against the Carrier Defendants while CCE’s claims against Apple proceeded. *Cellular Commc’ns Equip. LLC v. Apple Inc.*, Case No. 6:14-cv-251, Dkt. No. 245 (E.D. Tex. August 26, 2016) (“CCE Wave 1 Order”). For this reason, CCE and the Carrier Defendants agree that CCE’s claims against the Carrier Defendants should be severed and stayed under the same rationale and terms of Judge Mitchell’s CCE Wave 1 Order. *See, generally*, CCE Wave 1 Order at 4-7.

Given the current posture of this case, and as Judge Mitchell found in CCE Wave 1, “adjudication of the severed claims in this case against Apple would very likely dispose of the remaining claims against the Carriers.” CCE Wave 1 Order at 5. Indeed, as Judge Mitchell noted in CCE Wave 1, “[T]he Federal Circuit has clarified that ‘the manufacturer’s case need only have the potential to resolve the “major issues” concerning the claims against the customer—not every issue—in order to justify a stay of the customer suits.’” CCE Wave 1 Order at 6 (quoting *Spread Spectrum Screening LLC v. Eastman Kodak Co.*, 657 F.3d 1349, 1358 (Fed. Cir. 2011)). Such is the case here. Moreover, just as in CCE Wave 1, to the extent that CCE proceeds to trial against Apple in this case after the Carrier Defendants are severed and stayed, the Carrier Defendants “have agreed to be bound by the invalidity and infringement rulings in this case as to Apple.” CCE Wave 1 Order at 6.

Accordingly, the parties to this Joint Motion submit that good cause exists for severing and staying CCE’s claims against the Carrier Defendants. Doing so will allow the parties to resolve CCE’s claims in the most efficient way possible and will also render moot the Carrier Defendants’ prior Motion to Sever and Stay. Dkt. No. 333. A Proposed Order is submitted with this Joint Motion for the Court’s consideration and entry.

For the avoidance of doubt this Joint Motion does not affect claims and defenses related to Verizon’s Ellipsis family of products, namely Ellipsis 10, Ellipsis Kids, and Ellipsis 8, that were recently severed from Civil Action Nos. 2:15-cv-00576, 2:15-cv-00579, 2:15-cv-00580, and 2:15-cv-00581 and consolidated for all pre-trial purposes with the recently-filed Civil Action Nos. 2:17-cv-00078 and 2:17-cv-00079, pursuant to the Court’s Order of March 7, 2016. Dkt. No. 386.

Dated: March 10, 2017

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

In accordance with Local Rule CV-7(h), the undersigned certifies that CCE and the Carrier Defendants are in agreement as to the relief sought and, therefore, jointly bring this motion. The undersigned also certifies that Defendant Apple is unopposed.

/s/ Ed Nelson III

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served on all parties of record on March 10, 2017 via the Court's CM/ECF system.

/s/ Ed Nelson III